

The stipulations of the parties listed in the Award of the Administrative Law Judge are adopted by the Appeals Board for this review.

### ISSUES

The issues for determination by the Appeals Board are the nature and extent of claimant's disability and her average weekly wage. The respondent also raised an issue concerning its entitlement to an extension of its terminal date.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record, the Appeals Board finds that the Award entered by the Administrative Law Judge should be affirmed. The findings of fact and conclusions of law as enumerated in the Award are found to be accurate and are hereby adopted by the Appeals Board as if specifically set forth herein.

The Appeals Board agrees with the finding by the Administrative Law Judge that claimant has proven that her work for respondent aggravated, accelerated and intensified claimant's low back condition and the resulting disability is compensable. The Appeals Board further agrees that, in light of the restrictions imposed by the several doctors whose opinions are in evidence in this case, claimant is entitled to an award based on work disability. Pursuant to Hughes v. Inland Container Corp., 247 Kan. 407, 799 P.2d 1011 (1990), permanent partial general disability should be determined by the extent (percentage) of reduction of the employee's ability to perform work in the open labor market and the employee's ability to earn a comparable wage. Both prongs of this two-part test were properly considered by the Administrative Law Judge in applying the opinion testimony of the vocational experts in light of the employee's education, training, experience and capacity for rehabilitation. K.S.A. 1992 Supp. 44-510e(a).

Giving due weight to the restrictions imposed by the treating and examining physician and the opinions of claimant's vocational expert, Mr. Michael Dreiling, as to claimant's post-accident ability to earn a comparable wage in the open labor market and claimant's labor market loss, we agree with the Administrative Law Judge and find the claimant to have sustained a 56.75 percent work disability.

The parties stipulated to a base average weekly wage of \$453. The dispute concerns the value of the "additional compensation" pursuant to K.S.A. 1992 Supp. 44-511. Respondent objects to the Administrative Law Judge's reliance upon the fringe benefits figure derived from the brochure claimant was given by respondent. Respondent's hearsay objection to the admission of the brochure is without merit. As to the weight that document should be given, the Appeals Board notes that the evidence concerning the value of the additional compensation provided claimant by respondent is uncontroverted. Uncontroverted evidence may not be disregarded and is generally regarded as conclusive absent a showing it is improbable or untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976). The Appeals Board does not find the uncontroverted evidence to be unreasonable or so untrustworthy as to be disregarded. Therefore, the Administrative Law Judge properly considered the fringe benefit information

contained in Exhibit No. 1 to claimant's November 22, 1996, deposition together with claimant's testimony concerning same.

Finally, respondent argues the Administrative Law Judge erred by not granting its requested extension of terminal date to present evidence of the value of claimant's fringe benefits. A review of the chronology of this case reveals that respondent had ample time to produce this evidence and failed to do so despite several requests for same from claimant's counsel. Under the circumstances, respondent failed to establish good cause for another extension of its terminal date.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award dated June 12, 1997, as modified by the Award Nunc Pro Tunc entered by Administrative Law Judge Bryce D. Benedict should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Stanley E. Oyler, Topeka, KS  
Brian J. Fowler, Kansas City, MO  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director